

(2013) 12 KAR CK 0435

In the Karnataka High Court

Case No : Regular First Appeal No. 1402 of 2010 (PAR)

Smt Halamma

APPELLANT

Vs

Sri Papanna @ Papaiah

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0435

Hon'ble Judges : K.L. Manjunath, J;A.V. Chandrashekara, J

Bench : Division Bench

Advocate : S. Raju, K.P. Bhuvan, for the Appellant; S.G. Kulkarni and C.K. Nandakumar, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The unsuccessful plaintiff has filed this appeal challenging the judgment and decree passed by the Additional Senior Civil Judge, Ramanagara dated 4.3.2010 in O.S. 596/2007. Heard the learned counsel for the parties.

2. According to the plaint averments, the plaintiff is the daughter of one Huchappa Mestri born to his second wife by name Puttanarasamma. The defendant is also the son of Huchappa Mestri born to his first wife Halamma.

3. Contending that after the death of her father, no partition had taken place between defendant and herself, a suit came to be filed for partition and separate partition of the suit schedule property.

4. The defendant contested the suit. He admitted the relationship between the plaintiff and him. According to him, plaintiff and her mother Puttanarasamma have relinquished all the right, title and interest in respect of all the joint family properties under a registered Release Deed dated 30.12.1974 by receiving a sum of Rs. 5,000/- and since then, he has been enjoying the suit schedule property as his absolute property. It is also his case that the amount of Rs. 5,000/- paid by him was invested by the plaintiff by purchasing the property at

Shyanumangala Village and therefore, it was pleaded by the defendant that suit filed by the plaintiff was not maintainable. It is also his contention that item No. 7 in the suit schedule property is the self acquired property of his son. Based on the above pleadings, following issues were framed by the Trial Court:--

5. To prove their respective contentions, the plaintiff got herself examined as P.W.-1 and she relied upon 10 documents marked as Ex. P-1 to 10. The defendant on his behalf examined his son Rodappa and has relied upon 12 documents marked as Ex. D-1 to 12.

6. The Trial Court, after appreciating the entire evidence let in by the parties, has held issues 1 and 2 in the affirmative and issue 3 in the negative and dismissed the suit. Challenging the legality and correctness of the judgment and decree passed by the Trial Court, the present appeal is filed.

7. The learned counsel for the appellant contends that the Trial Court did not consider the case of the parties properly. According to him, even the released deed has not been proved by the defendant. The Trial Court has wrongly held that the release deed is proved. According to him, when the defendant did not step into the witness box, the Trial Court could not have given much importance to the evidence, as he is only the Power of Attorney Holder having no knowledge of the facts of the case. In the circumstances, he has requested for setting aside the judgment and decree of the Trial Court. He also contends that when the release deed was executed, the plaintiff was minor and such release deed does not bind her rights.

8. Per contra, the learned counsel for the respondent/defendant submits that the defendant has proved Ex. D-1 and Ex. D-2 by producing the original release deed of the year 1974. When it is a registered document of 30 years old and when the same has been produced from the proper custody, he contends that the execution of the document is deemed to have been proved in view of the presumption attached to such document u/s 90 of the Evidence Act. According to him, item No. 7 is the self acquired property of D.W.-1 which has been proved by him by letting in sufficient oral and documentary evidence. In the circumstances, he requests for dismissal of the appeal.

9. Having heard the learned counsel for the parties, we have to consider the following points for consideration:--

a) Whether the appreciation of evidence by the Trial Court in regard to issue No. 1 and 2 is just and proper?

b) Whether findings of the Trial Court on issues 1 and 2 is perverse and based on proper appreciation of evidence?

c) Whether the judgment and decree of the Trial Court requires to be interfered?

10. Admittedly, the relationship between the parties is not in dispute. The only dispute is to whether the plaintiff and her mother had executed the release deed

in favour of the defendant in the year 1974 as per Ex. D-2.

11. In the cross examination of P.W.-1, the plaintiff admits payment of Rs. 5,000/- made by the defendant to her mother. According to her, payment of Rs. 5,000/- was made by the defendant to her mother. She admits that out of the said Rs. 5,000/-, so received she had purchased two acres of land in Shanumangala Village as per Ex. D-9 and also admits that two acres of land was acquired by KIADB and she has received a sum of Rs. 12,00,000/- as compensation.

12."" In order to prove Ex. D-2, the defendant has relied upon the evidence of D.W.-1, who is the GPA holder of defendant No. 1 and he is none other than the son of the defendant. Ex. D-1 is the Power of Attorney executed by him on account of old age and hence he could not attend to the Court proceedings. Admittedly, Ex. D-2 is a registered document of 30 years old. The document produced was executed in the year 1974. The suit came to be filed in the year 2007 i.e., 33 years after the execution of the release deed. Even if we consider that the plaintiff was not aware of the execution of the release deed and she was minor at that time, she could have challenged the same within 3 years after attaining majority; but she did not do so.

13. Even if we accept the arguments of the learned counsel for the appellant that appellant was not aware of the execution of the release deed, atleast when she learnt the execution of such document on written statement being filed by the defendant in the present suit, she could have challenged the release deed on the ground of fraud by filing a necessary application for amendment of plaint. Such an attempt is not made by her. When a 30 years" document is produced from a proper custody, question of examining such document by examining the witness or scribe does not arise in view of the presumption of such admission u/s 90 of the Evidence Act.

14. When Ex. D-2 release deed came to be executed, the plaintiff was not a minor. She was major. The said document is jointly executed by her and her mother. The contention of the appellant that when Ex. D-2 came into existence she was minor, cannot be accepted.

15. In the circumstance, we are of the view that the findings of the Trial Court on issue No. 1 cannot be interfered with in any manner.

16. So far as point No. 2 is concerned, admittedly, the property stands in the name of D.W.-1. There is nothing on record to show that the same was purchased by him out of the joint family funds. Even otherwise, in view of answering issue No. 1 whether it is self acquired property of D.W.-1 or not, need not be considered by this Court since the appellant has no right to claim any interest on account of execution of release deed of the year 1974. In the circumstances, we do not see any merits in the appeal. In the result, the appeal is dismissed. Parties to bear their costs.